

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

COURTROOM PROCEEDINGS

The court met in its courtroom at 1:30 P.M. Present: Honorable Herbert I. Levy, Acting Presiding Justice; Honorable Brad Hill, Associate Justice; Honorable Stephen Kane, Associate Justice; and Leisa V. Biggers, Clerk/Administrator, by Rosemary Heredia, Assistant Deputy Clerk.

F047689 Greg Opinski Construction, Inc. et al. v. All West Construction
F047708 Greg Opinski Construction, Inc. et al. v. All West Construction

Cause called and argued by Ellyn E. Nesbit, Esq., counsel for appellants and by Stuart E. Jones, Esq., counsel for respondent.

Cause ordered submitted.

Court recessed until Thursday, December 28, 2006 at 11:00 A.M.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
Fifth Appellate District

F049341 People v. Richards

The judgment is reversed and the matter remanded for the court to conduct a post-conviction *Marsden* hearing pursuant to *People v. Smith, supra*, 6 Cal.4th 684, as discussed *ante*. If the court grants the *Marsden* motion, a new trial motion is filed, and the new trial motion is granted, appellant shall receive a new trial. If the court denies the *Marsden* motion, or a new trial motion is not filed, or a new trial motion is filed and denied, the court shall reinstate the judgment of conviction and re-sentence appellant, dismissing the first section 667, subdivision (a) enhancement attached to counts I and II, so that appellant's aggregate sentence is 85 years to life. Harris, Acting P.J.

We concur: Cornell, J.; Dawson, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F048828 People v. Wilson

The judgment is affirmed. Harris, Acting P.J.

We concur: Cornell, J.; Dawson, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F048416 People v. Gamble

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

F048416 People v. Gamble

The judgment is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F049751 In re Catherine H. et al., Minors; Stanislaus County Community Services Agency v. Aaron H.

The matter is remanded to the juvenile court with directions to direct the agency to use reasonable efforts to conduct a proper inquiry into the children's Indian heritage and to comply with the notice provisions of the ICWA. After proper inquiry is made and proper notice is given, if any tribe, or the BIA, comes forward and asserts that the children are Indian children, the juvenile court's jurisdictional and subsequent orders are deemed vacated for failure to comply with the ICWA [Citation].

If, after proper inquiry is made and notice is given to the tribes and the BIA, and the requisite time period has expired, no Indian tribe has come forward and identified the children, or requested an extension of time, or sought to intervene in these proceedings, the jurisdictional and dispositional orders are affirmed. Wiseman, Acting P.J.

We concur: Cornell, J.; Hill, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F048615 People v. Bowers

Oral argument having been waived in the above-entitled case in accordance with the provisions of a notice mailed to counsel, the calendar date heretofore set is vacated and the case is submitted for decision.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

F048615 People v. Bowers

The judgment is affirmed. Gomes, J.

We concur: Vartabedian, Acting P.J.; Wiseman, J.

[CERTIFIED FOR PUBLICATION]

F050435 In re Michelle P. et al. Minors

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

F050435 In re Michelle P., et al., minors

The judgment is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F049588 People v. Blankenship

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
Fifth Appellate District

F049588 People v. Blankenship
The judgment is affirmed.
By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

**F050872 Amber A. v. Superior Court of Stanislaus County; Stanislaus County
Community Services Agency**
This court's order dated August 31, 2006, consolidated case Nos.
F050713 and F050872 for briefing purposes. These matters are now
deconsolidated.

F050713 In re Dennis A. et al., Minors
This court's order dated August 31, 2006, consolidated case Nos.
F050713 and F050872 for briefing purposes. These matters are now
deconsolidated.

**F050872 Amber A. v. Superior Court of Stanislaus County; Stanislaus County
Community Services Agency**
Oral argument having been waived in the above-entitled case in
accordance with the provisions of a notice mailed to counsel, the
calendar date heretofore set is vacated and the case is submitted for
decision.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

**F050872 Amber A. v. Superior Court of Stanislaus County; Stanislaus County
Community Services Agency**

Let a peremptory writ of mandate issue (1) directing the juvenile court to vacate the following orders: the orders finding that reasonable reunification services have been provided to Amber; the order terminating reunification services to Amber; and the order terminating Amber's parental rights; and (2) directing the juvenile court to comply with the orders contained in our opinion filed in appeal No. F048762 on May 23, 2006. The juvenile court shall comply with those orders by following the steps described in part III of this opinion. Pursuant to rule 24(b)(3) and to promote the interests of justice, the decision in this matter (No. F050872) shall be final upon filing. Amber's appellate counsel's appointment shall cover actions taken pursuant to this court's comments set forth in part IV of this opinion. This opinion does not dispose of Amber's appeal, No. F050713, from the termination of her parental rights. The writ and appeal proceedings were consolidated for briefing purposes only and shall be treated separately from this point forward. Wiseman, Acting P.J.

We concur: Cornell, J.; Hill, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F049530 In re Food Additives (HFCS) Cases

Appellant having filed an abandonment and/or request for dismissal of appeal, IT IS HEREBY ORDERED that the appeal in the above-entitled action is dismissed.

F050680 In re A. D., a Minor

The above-entitled case is submitted for decision.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

- F050680 In re A. D., a Minor**
The appeal is dismissed.
By the Court.
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F048059 People v. Garibay**
The judgment is affirmed with modifications. Kane, J.
We concur: Levy, Acting P.J.; Hill, J.
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F050289 In re Michelle P. et al., Minors**
Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.
- F050289 In re Michelle P. et al., Minors**
The judgment is affirmed.
By the Court.
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F049414 People v. Gonzalez, Jr.**
Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
Fifth Appellate District

F049414 People v. Gonzalez, Jr.

The judgment is modified to strike the prior prison term enhancement. The trial court is directed to prepare an amended abstract of judgment consistent with this opinion and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]